IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 16478 of 2004

Between:

Pallavi Educational Society, Minerva Complex, 7th Floor, SD Road, Secunderabad Rep by its Secretary Komaraiah, S/o. late M. Venkataiah, Aged 44 years, R/o. Secunderabad.

..... PETITIONER

AND

1 The Manager (Recoveries) & Estate Officer, A.P. Industrial

Infrastructure Corporation Ltd. 6th Floor, Parsrama

Bhavan, Fateh Maidan Road, Hyderabad.

2 The Zonal Manager, APIIDC, Zonal Officer Industrial Estate, Moulali, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of writ of "Certiorari" calling for the records relating to the proceedings of the 1st respondent made in proceedings No. 158/DW/REC/2003 dated 5-3-2004 as confirmed by the Appellate Authority 1st Additional District Judge, Ranga Reddy made in CMA No. 67 of 2004 dated 5-8-2004 and quash the same being illegal, arbitrary, unconstitutional apart from being without jurisdiction and being unauthorized by the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968.

Counsel for the Petitioner: MR.S.NIRANJAN REDDY

Counsel for the Respondents: MR.E.MADAN MOHAN RAO FOR RVAK-2

The Court made the following:

HONOURABLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.16478 OF 2004

ORDER:

The petitioner is a registered Educational Society. The petitioner approached this Court through this writ petition challenging the proceedings of the first respondent dated 05.03.2004 and the order of the appellate authority dated 05.08.2004 in C.M.A.No.67 of 2004 and seeking to declare those orders as illegal, arbitrary and unconstitutional.

2 . The petitioner contends that it is an educational society running educational institution. The Society purchased an extent of Ac.1.20 gts. of land in Sy.No.617/12 of Malkajgiri village in Rangareddy District in the year 2002. It is also in possession of another extent of Ac.1.20 gts. Under an agreement of sale dated 28.09.2002. The vendor of the petitioner society purchased the said land under two registered sale deeds dated 28.09.1991 from its predecessors in title, in pursuance of a compromise recorded before the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 in LGC No.253 of 1995 dated 04.06.1997. The petitioner's vendor's name was mutated in the revenue records and in the records of Malkajgiri Municipality. The vendor of the petitioner purchased the property on 16.07.1960. The petitioner and its predecessors are in continuous possession of the property. When the Mandal Revenue Officer, Malkajgiri and Special Deputy Collector, Ranga Reddy District sought to interfere with the petitioner's rights over the property, the petitioner filed W.P.No.479 of 2003 and it was disposed of by observing that the petitioner has to be evicted in accordance with the procedure established by law. When the Karpa and Malkajgiri Municipalities tried to interfere with the rights of the petitioner, the petitioner filed O.S.No.606 of 2002 for perpetual injunction in the Court of the Principal Junior Civil Judge, Hyderabad, East and North, Ranga Reddy District and an ad-interim injunction was granted in I.A.No.1254 of 2004.

The petitioner approached the Managing Director of APIIC and submitted a letter with a request to give up all the claims over the property by receiving reasonable amount without prejudice to the rights of the petitioner. When the first respondent gave a show cause notice for eviction on 04.09.2003 the petitioner gave a reply, but the first respondent without considering the representation of the petitioner along with the documents passed the order on 05.03.2004 holding that the petitioner is an unauthorized occupant and he has to vacate the premises within 30 days. The petitioner is having a *bonafide* claim to the property and longstanding possession over the same. The appeal preferred by the petitioner in C.M.A.No.67 of 2004 was also dismissed on illegal and untenable grounds. Hence, this writ petition, for the relief as mentioned above.

3. The second respondent resisted the writ petition through a counter-affidavit and the contents are briefly as follows:

The Government of A.P. through G.O.Ms.No.1162 Industries and Commerce Department dated 04.12.1973 transferred all the industrial areas in A.P. in favour of the second respondent-Corporation. The land in question is situated in the Industrial Development area, Nacharam. Under the guise of purchase of the land through a registered sale deed and agreement in Survey No.617/12 of Malkajgiri village, the petitioner unauthorisedly occupied the land of the second respondent in Survey No.44/P of Nacharam village without any manner of right. The petitioner filed W.P.No.479 of 2003 before this Court against the District Collector-Ranga Reddy, RDO-Chevella, MRO-Uppal, MRO-Malkajgiri and two others seeking a direction against them not to interfere with the property of the petitioner situated in Sy.No.617/1/AA (old) Sy.No.617/12 (New) situated at Dhanalakshmi Colony, Moula Ali, Ranga Reddy District, without initiating any proceedings under law. The High Court disposed of the said writ petition on 28.02.2003 directing the respondents to get the land surveyed and if the land of the petitioner falls within the Government land, the respondents therein were given liberty to evict the petitioner by following due process of law. Subsequently, the land was got surveyed through the Surveyor of the Office of the Assistant Director of Survey and Land Records, Ranga Reddy District, after giving notice to the petitioner. On physical verification of

the land, it was found that the petitioner constructed the building in survey No.44/P of Nacharam village and part of survey No.45 of Nacharam village.

4. Instead of vacating the public premises in Survey No.44/ P of Nacharam Village, the petitioner with a *mala fide* intention to continue with his unauthorized occupation filed O.S.No.606 of 2003 on 09-04-2003 for perpetual injunction by mentioning the suit schedule property as an extent of 3500 sq.yards in Survey No.617/1/AA (old), 617/12 (new) situated at Dhanalakshmi Colony, Moula-ali, Ranga Reddy District. The temporary injunction granted by the Civil Court was in respect of the said property. When the Estate Officer issued a show cause notice on 04-09-2003 under Section 4(1) of the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968 (for brevity 'the Act') the petitioner in his explanation dated 11-09-2003 mentioned that he has already requested the APIIC Authorities for regularization of the unauthorized occupation of the APIIC land by conceding the title of APIIC and requested to revoke the show cause notice. In the meanwhile, the petitioner proceeded with the unauthorized construction of the building and started running a school in the industrial area. No orders were issued by the Corporation regularizing the unauthorized occupation of the land. The Estate Officer after examining the case passed the eviction order on 05-03-2004 under Section 5(1) of the Act and directed the petitioner to vacate the land. The petitioner is now trying to project that there is a title dispute over the said land running a school in the industrial development area Nacharam, is contrary to zonal regularization of the HUDA. The Estate Officer passed the order after following the procedure prescribed under the Act and it was framed by the First Additional District Judge, Ranga Reddy District in C.M.A.No.67 of 2004. The petitioner never made any claim over Sy.No.44 of Nacharam Village. Therefore, the order of status-quo granted by this Court on 15-09-2004 is liable to be vacated and the writ petition is liable to be dismissed with costs.

5. The petitioner filed reply affidavit reiterating the contentions raised by him in the writ petition and denying the circumstances explained by the 2nd respondent.

6. In the light of the contentions raised by the parties the point for consideration is:

> "*Whether the petitioner is entitled to maintain the writ and whether the status quo order dated 15-09-2004 is liable to be vacated.*"

7. The petitioner is contending that the Society purchased an extent of Ac.1.20 gts. in Sy.No.617/12 of Malkajgiri Village and Ac.1.20 gts under an agreement of sale dated 29-08-2002, but conspicuously the petitioner did not mention the survey number in which the land covered by the agreement was purchased. The petitioner tried to impress upon this Court by contending that the land covered by Sy.No.617/12 of Malkajgiri Village was purchased by its vendor under two registered sale deeds dated 28-09-1991 which was said to be purchased by it's vendor's vendor on 16-07-1960. But the petitioner did not mention the nature of documents through which his vendor purchased the said land. The petitioner asserted in its affidavit that the petitioner-Society is in continuous possession of the land situated in Sy.No.617/12 of Malkajgiri Village. There is no whisper in the writ affidavit or in the reply that the petitioner has any semblance of title or right over the land covered by Sy.No.44/P of Nacharam Village at any point of time.

8. The learned counsel during the course of arguments submitted that though the petitioner purchased the land in Sy.No.44 of Nacharam Village, the Survey number was wrongly described as 617/12 of Malkajgiri Village. Though the said document was referred in the earlier proceedings, the petitioner did not take the said plea at any point of time. The plea of the petitioner is not substantiated with any other material that the sale deeds pertained to the land situated in Sy.No.44/12 and the boundaries of Sy.No.617/12 of Malkajgiri Village, described in the schedule of the sale deeds are different from the boundaries mentioned in the order passed by the Estate Officer. The truth from the womb of falsehood came out by way of discrepancy in the boundaries of the respective properties.

9. The learned counsel for the petitioner vehemently argued by submitting that the petitioner is a *bona fide* purchaser through registered transaction and he is having long standing possession of the property. This refers to the land said to be purchased in Sy.No.617/12 of Malkajgiri Village, though no material is placed by the petitioner. The learned counsel for the petitioner contended that the occupation of the land in Sy.No.44 of Nacharam village by the petitioner cannot be treated as an unauthorized occupation. Therefore, it cannot be said that there is any serious dispute regarding the title over the property situated in Sy.No.44 of Nacharam Village. The petitioner mentioned in the affidavit that the provisions of the Act ought not have been invoked on account of the involvement of the disputed question of fact and title. The petitioner, having mentioned that there is a disputed question of fact and title, did not explain as to how the writ petition is maintainable under those circumstances.

10. The learned counsel for the petitioner relied on certain decisions of this Court and the Supreme Court regarding the maintainability of the writ petition and I wish to refer to them in brief.

I n **G.Rajalakshmi v. Appellate Authority (Chief Judge, City Civil Court, Hyderabad), t**he Learned Single Judge of this Court observed that in the proceedings arising under the provisions of the Act, the Estate Officer as the trial Tribunal was bound to consider the objections filed by the occupant to the proposed eviction from the premises before making an order. The defect due to non-consideration of the objections could not be cured by the Appellate Tribunal considering them and making an order. The said judgment was rendered in a dispute relating to a stall situated in the Civil Aerodrome at Begumpet owned by the Aviation Department. This Court while setting aside the order of the Appellate Authority directed the Estate Officer for fresh disposal of the matter after considering the objections.

I n **Shangrila Food Products Ltd. V. Life Insurance Corporation of India,** the Supreme Court while dealing with the Public Premises (Eviction of

Unauthorised Occupants) Act, 1971 observed that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties comfort and substantiated justice. This jurisdiction of the High Court being extra-ordinary is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unauthorized advantage gained by a party priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

In **T. Tirumala Reddy, SE, APSEB, Cuddapah v. APSEB Engineers Association, Hyderabad,** the Division Bench of this High Court held that the provisions of the Civil Procedure Code cannot be made *ipso facto* applicable to the proceedings before the said Court under a special Act merely because the Court is the Principal Civil Court of the District. This decision is cited in an effort to impress upon this Court that the C.M.A before the First Additional District Judge, Ranga Reddy is not maintainable.

In **Mohammed Ibrahim v. Deputy Commissioner of Police, Administration-cum-Estate Officer, Hyderabad** the learned Single Judge of this Court while dealing with a matter under A.P. Public Premises Eviction of Unauthorised Occupants Act, 1968 held that the writ petition filed questioning the issue of notice under Section 4 of the Act is liable to be dismissed.

In **P.Shivaji v. Government of Andhra Pradesh,** the learned Single Judge of this Court while dealing with the matter under A.P. Public Premises (Eviction of Unauthorised) Act, 1968 held that the notification issued by the Government empowering the Estate Officer not below the rank of Deputy Collector to exercise the powers of the Estate Officer under the Act is not liable to be questioned on the ground of typographical mistake in mentioning exact name of the Act and it cannot be challenged on the ground of vagueness when it empowered all the Estate Officers of HUDA to exercise the powers of Estate Officers under the Act.

In **Barkath Ali v. State of Andhra Pradesh**, a learned single Judge of the A.P. High Court while considering the scope of Section 5 of A.P. Premises

(Eviction of Unauthorized Occupants) Act, 1961 held that the said Section is ultravires the Constitution and it is declared as void as it infringes the equality guaranteed under Article 14 of the Constitution of India.

11. The learned counsel for the petitioner submitted that the writ petition was entertained in the said case under Article 226 of the Constitution of India and the validity of Section 5 of the Act was tested and held ultravires.

12. The above judgments were rendered by this Court and the Supreme Court under the circumstances mentioned therein and none of the above judgments are applicable to the facts of the present case though there is no dispute regarding the principles laid down in the above judgment.

13. The learned counsel for the petitioner further submitted when there is a threat to the *bona fide* right and title of the property of the petitioner which was guaranteed under the Constitution and when there is a threat of dispossession the constitutional Court has to come to the rescue of the petitioner by invoking the extraordinary jurisdiction under Art.226 of the Constitution of India by taking into consideration the long standing possession of the petitioner and the *bona fides* involved in the matter.

14. In the counter affidavit the second respondent categorically mentioned that the land covered by the eviction order dated 05.03.2004 is entirely different from the land over which the petitioner is claiming title and possession. The party who comes to the Court is expected to come with clean hands. On a direction given by this Court, the land under the occupation of the petitioner was surveyed and it was identified as the land situated in Sy.No.44 of Nacharam village and no part of the said land is situated in Sy.No.617/12 of Malkajgiri village. The petitioner in a mood of desperation is tapping the doors of various forums in his effort to continue to hold the possession of the property by hook or crook. The petitioner challenged order of the estate officer by preferring an appeal and he lost it. He approached the Civil Court by giving

description of the property as the land situated in Sy.No.617/12 of Malkajgiri village and obtained a temporary injunction in respect of the land situated in Malkajgiri village. He also approached this Court through W.P.No.479 of 2003 seeking direction against the Collector-Ranga Reddy, RDO-Chevella, MRO-Uppal, MRO-Malkajgiri and 2 others from interfering with the property and invited an order of eviction after following due procedure prescribed under law. He also approached the Managing Director of APIIC with an offer to pay a reasonable price of the land requesting the Corporation to give up all the rights over the property. When the society failed in all efforts in other forums approached this Court as a last resort seeking protection from dispossession on the pretext of running a school in the premises and with a latest plea of adverse possession.

15. The petitioner tried to impress upon the Courts that the land in question is situated in Sy.No.617/12 of Malkajgiri village. When the land in question was surveyed and identified as a land situated in Sy.No.44 of Nacharam village, the petitioner came with a plea that the survey number is wrongly mentioned. When the land in question was described as a public premises, the petitioner came with a plea that there is a disputed questions of fact and title. When the estate officer passed the order, the petitioner raised a plea that the estate officer is not competent to pass the order. When the appeal preferred by the petitioner was dismissed, a plea was raised that the appellate Court did not consider all the pleas raised by the petitioner. When the petitioner was questioned as to what is the material to prove its title to the land in question, the petitioner came with a plea of adverse possession by raising a plea at a belated stage. When the petitioner was questioned as to what are his *bona fides* in approaching this Court, the reply was that it is running a school. The above circumstances are indicating that the petitioner failed to place any prima-facie material showing any kind of right or title over the land in question, which compels this Court to come to the rescue of the petitioner by way of protecting his possession. This Court would definitely come to the rescue of the people, who invoke the writ jurisdiction by making a *bona fide* request by virtue of a right vested with the petitioner or an obligation on the part of the opposite party. Unless the petitioner convinces this Court that there is any illegality perpetrated by imposing certain

orders over him against the law or established norms it is not entitled to maintain the writ petition and the petitioner is not entitled for any protection against the lawful orders passed by an authority under a statute.

16. The writ petition is accordingly dismissed at the admission stage. The order of status-quo granted by this Court on 15.09.2004 stands vacated.

Dr. G.YETHIRAJULU, J

19th November, 2004

SKM/VS

TO

1 The Manager (Recoveries) & Estate Officer, A.P. Industrial

Infrastructure Corporation Ltd. 6th Floor, Parsrama

Bhavan, Fateh Maidan Road, Hyderabad.

2 The Zonal Manager, APIIDC, Zonal Officer Industrial Estate, Moulali, Hyderabad.

3 Two C.D. Copies.